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19
20 **UNITED STATES DISTRICT COURT**
21
22 **NORTHERN DISTRICT OF CALIFORNIA**
23
24 **OAKLAND DIVISION**

25 EPIC GAMES, INC.

26 Plaintiff, Counter-defendant
v.
27 APPLE INC.,
28 Defendant, Counterclaimant

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23 Case No. 4:20-cv-05640-YGR

24 **DECLARATION OF MARK A. PERRY IN
25 SUPPORT OF DEFENDANT APPLE INC.'S
26 ADMINISTRATIVE MOTION TO SEAL**

27 The Honorable Yvonne Gonzalez Rogers

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1 I, Mark A. Perry, hereby declare as follows:

2 1. I am an attorney licensed to practice in the State of California, and a member of the Bar
 3 of this Court. I am a partner at the law firm Weil, Gotshal & Manges LLP, counsel of record for
 4 Defendant Apple Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly proprietary
 5 and confidential information, based on my personal experience representing Apple.¹ I have personal
 6 knowledge of the facts stated below and, if called as a witness, would testify competently thereto. I
 7 submit this declaration in support of Apple’s Administrative Motion to Seal its Reply In Support of
 8 Apple’s Motion for Entry of Judgment on its Indemnification Counterclaim (the “Motion”) and
 9 concurrently filed declarations.

10 2. A party seeking to seal information must exhibit “compelling reasons” to overcome the
 11 “strong presumption in favor of access.” *Kamakana v. City & Cty. Of Honolulu*, 447 F.3d 1172, 1178
 12 (9th Cir. 2006) (quotation marks omitted). These “compelling reasons” must be “supported by specific
 13 factual findings that outweigh the general history of access and the public policies favoring disclosures.”
 14 *Id.* at 1178–79 (citation and quotation marks omitted). “In general, ‘compelling reasons’ sufficient to
 15 outweigh the public’s interest in disclosure and justify sealing court records exist when such ‘court files
 16 might have become a vehicle for improper purposes,’ such as the use of records to gratify private spite,
 17 promote public scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179 (citing *Nixon*
 18 *v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

19 3. Apple operates in an intensely competitive marketplace. Apple has serious and legitimate
 20 concerns that competitors will be quick to capitalize on any release of Apple’s highly sensitive
 21 information in order to gain competitive advantage. As such, Apple takes extensive measures to protect
 22 the confidentiality of its information.

23 4. The Court has “broad latitude” “to prevent disclosures of materials for many types of

25 1 Courts in this District and in the Ninth Circuit routinely grant motions to seal on the basis of declarations
 26 of counsel. *See, e.g., in re Qualcomm Litig.*, No. 17-00108, Dkt. 398-1 (S.D. Cal. Mar. 3, 2018); *Avago*
 27 *Techs. U.S. Inc., et al v. Iptronics Inc., et al.*, No. 10-02863-EJD, Dkt. 544 (N.D. Cal. Apr. 3, 2015);
 28 *VCisco Sys., Inc., et al. v. Opentv Inc., et al.*, No. 13-00282-EJD, Dkt. 76 (N.D. Cal. Oct. 8, 2018). I am
 personally familiar with Apple’s safeguarding of proprietary information, but if the Court deems this
 declaration insufficient, Apple respectfully requests that it be permitted to file a further declaration
 supporting filing under seal.

1 information, including, *but not limited to*, trade secrets or other confidential research, development, or
 2 confidential information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (emphasis
 3 in original).

4 5. Apple has carefully reviewed its Reply in Support of Apple’s Motion for Entry of
 Judgment on its Indemnification Counterclaim (the “Reply”), the supplemental declaration of Mark
 6 Rollins (the “Rollins Supplemental Declaration”), and the declaration of Mark A. Perry (the “Perry
 7 Declaration”), and now proposes only those redactions and requests to fully seal documents that are
 8 essential.

9 6. Specifically, Apple seeks to seal information from only two categories of confidential
 10 information: (1) competitively sensitive, non-public billing policy information revealing Apple’s internal
 11 processes and systems for conducting litigation and managing vendor billing; and/or (2) competitively
 12 sensitive, non-public financial information regarding Apple’s aggregate costs for the *Epic* litigation.

13 **Category 1: Apple’s Request as to Information that Reflects its Competitively Sensitive Internal
 14 Billing Policies, Processes, and Systems**

15 7. Apple first seeks to seal information regarding its confidential, internal billing policies,
 16 which reflect Apple’s strategy and systems for conducting litigation and managing its vendors. Apple
 17 has narrowly tailored its sealing request so as to maximize the public’s access to court documents without
 18 jeopardizing Apple’s business interests.

19 8. Public disclosure of this information, which Apple intended to keep confidential, could
 20 put Apple at a competitive disadvantage and thus cause economic harm, because it would reveal Apple’s
 21 proprietary inner billing processes and how it works with its vendors.

22 9. Below is a chart detailing the specific portions of the Reply and Rollins Supplemental
 23 Declaration that are sealable under this category for the reasons explained herein, as well as in the
 24 Motion.

25 Portion of Document Sought 26 to be Sealed	27 Document Title	28 Reason to Seal
10:4	Reply	Reflects information regarding Apple’s confidential, internal billing policies and procedures.
10:6	Reply	Reflects information regarding Apple’s confidential, internal

1	10:7-8	Reply	billing policies and procedures.
2			Reflects information regarding Apple's confidential, internal billing policies and procedures.
3	1:14-15	Rollins Supplemental Declaration	Reflects information regarding Apple's confidential, internal billing policies and procedures.
4			
5	1:17-21	Rollins Supplemental Declaration	Reflects information regarding Apple's confidential, internal billing policies and procedures.
6			
7	2:3-4	Rollins Supplemental Declaration	Reflects information regarding Apple's confidential, internal billing policies and procedures.
8			
9	2:6	Rollins Supplemental Declaration	Reflects information regarding Apple's confidential, internal billing policies and procedures.
10			
11	2:9	Rollins Supplemental Declaration	Reflects information regarding Apple's confidential, internal billing policies and procedures.

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Category 2: Apple's Request as to Information that Reflects Apple's Financial Information
 13 **Relating to Costs Expended by Apple in the *Epic* Litigation and the *Cameron* and *Pepper***
 14 **Litigation**

15 10. Second, Apple seeks to seal competitively sensitive, non-public financial information
 16 regarding Apple's aggregate costs for the *Epic* litigation and the *Cameron* and *Pepper* litigation,² which,
 17 if disclosed, would provide competitors with an unfair advantage against Apple. Apple has narrowly
 18 tailored its sealing request so as to maximize the public's access to court documents without jeopardizing
 19 Apple's business interests, or that of its vendors.

20 11. Below is a chart detailing the specific portions of the Reply and Rollins Supplemental
 21 Declaration that are sealable under this category for the reasons explained herein, as well as in the
 22 Motion.

23 Portion of Document Sought to be Sealed	24 Document Title	25 Reason to Seal
24 10:8-9	25 Reply	26 Reflects non-public financial information regarding Apple's aggregate costs for its litigation expenses in the <i>Cameron</i> and <i>Pepper</i>

27

28 ² *Donald Cameron v. Apple Inc.*, 4:19-cv-3074-YGR (*Cameron*) and *In Re Apple iPhone Antitrust Litigation*, 4:11-cv-6714-YGR (*Pepper*).

1	1:22	Rollins Supplemental Declaration	litigation. Reflects non-public financial information regarding Apple's aggregate costs for its litigation expenses in the <i>Cameron and Pepper</i> litigation.
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7 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and
correct. Executed this 1st day of March 2024, in Washington, D.C.
8

9 Dated: March 1, 2024
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Respectfully submitted,

11 By: /s/ Mark A. Perry
12

13 Mark A. Perry
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